

SO ORDERED.

SIGNED this 22nd day of December, 2020.



LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:)	
)	
Peter Raymond LaRoque and)	Chapter 13
Esther Behar LaRoque,)	
)	Case No. 15-50567
Debtors.)	
)	
)	
)	

ORDER

OVERRULING TRUSTEE'S OBJECTION TO CLAIM

THIS MATTER came before the Court on the Objection to Claim Number 9 (Docket No. 35, the "Objection") filed by the chapter 13 trustee (the "Trustee"). The Trustee objected to the claim of Grant & Weber (the "Creditor") on the basis that disbursement checks directed to the Creditor have been returned by the post office with no forwarding address. The Trustee adds that she has been unable to locate a valid, alternate address for the Creditor and asks that the Creditor's claim be disallowed. Because the Court finds, however, that the inability to successfully deliver allowed disbursements does not constitute a basis to disallow claims under 11 U.S.C. § 502(b)¹ and that the Creditor's undelivered funds should be treated as unclaimed property under § 347(a), it will overrule the Trustee's Objection.

The Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code on June 2, 2015 and a plan was confirmed on August 21st of that same year, which provided an estimated 20 percent dividend to general unsecured claims. Based on

¹ All citations to statutory sections refer to Title 11, United States Code, unless otherwise indicated.

the claims filed, and according to the Trustee's records, unsecured creditors are now set to receive an estimated 33 percent dividend on allowed claims. The Debtor's case is nearing completion and the Trustee has filed Notices of Final Cure and obtained an Order Granting Motion to Deem Mortgage Current (Docket No. 27, 28, 33).

The Creditor timely filed an unsecured claim for \$3,950 on June 29, 2015, directing that notices and payments be sent to 861 Coronado Center Drive, Suite #211, Henderson, Nevada 89052. Per the Trustee's records, the Creditor is owed approximately \$1,303.50 on its claim, but the checks directed to the claim-listed address have thus far been returned as undelivered. The Creditor has not amended its claim to provide a new address and has not filed a change of address notice on the case docket.

Under § 502(a), a properly filed proof of claim is deemed allowed unless a party in interest objects. After such an objection is made, the court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount," unless the claim is disallowed by falling into one of the nine exceptions listed in § 502(b)(1)–(9). *See* § 502(b). After a proof of claim is filed, the burden shifts to any objecting party to present evidence that rebuts the presumptive validity of the claim. *Stancill v. Harford Sands Inc. (In re Harford Sands Inc.)*, 372 F.3d 637, 640 (4th Cir. 2004). If the objecting party carries its burden, the creditor "has the ultimate burden of proving the amount and validity of the claim by a preponderance of the evidence." *Id.*

The Trustee has not cited any of the enumerated exceptions within § 502(b) or any legal support for the argument that an inability to successfully deliver a distribution, to which the Creditor would otherwise be entitled, is a sufficient basis to disallow the Creditor's claim. In the absence of such support, and in light of the plain language of the operative statutes as well as persuasive caselaw considering the question, the Court finds unsuccessful delivery is not a basis to disallow an otherwise allowed claim under § 502(b).

The treatment of the Creditor's uncollected disbursements is instead governed by § 347(a), which determines the fate of this unpaid check from the Trustee. That section provides:

(a) Ninety days after the final distribution under section 726, 1194, 1226, or 1326 of this title in a case under chapter 7, subchapter V of chapter 11, 12, or 13 [1] of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

11 U.S.C. § 347(a). If the funds paid into a court pursuant to § 347(a) are not retrieved by the claimant within five years, the funds are “deposited in the Treasury in the name and to the credit of the United States.” 28 U.S.C. § 2042.

While the COLLIER treatise does not take a definitive position on the question, finding it unclear whether a trustee or the debtor may seek to have a claim disallowed where the creditor cannot be located during a case, 3 COLLIER ON BANKRUPTCY ¶ 347.02(1) (16th ed. 2020), this Court finds that Congress has provided an answer in § 347(a). The United States Bankruptcy Court for the Middle District of Tennessee succinctly summarized the proper treatment for a creditor's undelivered disbursements:

Section 347(a) is as straightforward as it gets. If a creditor does not negotiate a check, and that check remains uncashed 90 days after the final distribution, the funds represented by that check are deemed unclaimed funds and are to be deposited into the Court's registry in trust for the creditor. Period. The funds belong to the claimant holding an allowed claim. Here, the Trustee made payment on Check Holders' claim because it was an allowed claim. The Trustee issued a check and it was returned for an insufficient address. This is the exact scenario Congress obviously envisioned when enacting § 347(a).

In re Cunningham, No. 313-02021, 2017 WL 4417579, at *4 (Bankr. M.D. Tenn. Oct. 3, 2017). Despite the current status as undeliverable, the \$1,303.50 in funds held by the Trustee belong to the Creditor. The property rights that this Creditor and other unlocated creditors continue to hold in their allowed distributions “would be diminished, and § 347(a) would be rendered meaningless, if a trustee or the debtor could simply ask the court to disallow a claim every time the trustee was unable to locate a creditor during the case.” *In re Bair*, No. 15-61403, 2019 WL 6045481, at *3

(Bankr. N.D. Ohio, Nov. 14, 2019) (citing *Leider v. United States Treasury Dep't*, 301 F.3d 1290, 1296 (Fed. Cir. 2002)); *see also In re Sischo*, No. 10-08600, 2014 WL 3908627, at *2 (Bankr. W.D. Mich. July 30, 2014) (finding issue governed by § 347(a), as it involved “unclaimed funds, a problem trustees routinely confront with checks that are returned uncashed, usually by the U.S. Postal Service, marked as undeliverable, and without any explanation.”). For these reasons, if the funds to be disbursed to the Creditor remain unpaid 90 days after the Trustee’s final distribution in this case, they must be paid into the court for disposition as unclaimed funds under § 347(a). *See Bair*, 2019 WL 6045481, at *3.

Accordingly, IT IS HEREBY ORDERED that the Trustee’s Objection to Claim Number 9 of Grant & Weber is OVERRULED.

END OF DOCUMENT

PARTIES TO BE SERVED

Peter and Esther LaRoque (Ch.13)

15-50567

Phillip E. Bolton
via cm/ecf

Joshua Bennett
via cm/ecf

Kathryn Bringle, Trustee
via cm/ecf

William P. Miller, BA
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